



(Billing Code: 4410-14)

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

AG Order No. 4877-2020

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule authorizes the Assistant Attorney General in charge of the Criminal Division to perform the functions of the “Designated Authority” under executive agreements on access to data by foreign governments that either designate the Attorney General or the Department of Justice (the “Department”) as such authority or authorize the Attorney General to specify a Designated Authority, and for which the Attorney General has designated the Criminal Division as such authority. It also authorizes the Assistant Attorney General to further delegate that authority to officials in the Criminal Division, including officials in the Office of International Affairs (“OIA”).

DATES: Effective: [INSERT DATE OF PUBLICATION IN FEDERAL REGISTER]

FOR FURTHER INFORMATION CONTACT: Vaughn Ary, Director, Office of International Affairs, Criminal Division, U.S. Department of Justice, Washington, DC 20005; Telephone (202) 514-0000.

SUPPLEMENTARY INFORMATION: Congress authorized the United States to enter into executive agreements with foreign governments under which the parties afford each other reciprocal rights of access to data covered by such agreements in response to qualifying, lawful orders. *See* Clarifying Lawful Overseas Use of Data Act, Public Law 115-141, Div. V, Section 105(a) (March 23, 2018), 18 U.S.C. 2523 (“CLOUD Act”). The first such executive agreement was concluded between the Government of the United States of America and the Government of

the United Kingdom of Great Britain and Northern Ireland. *See* Agreement between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland on Access to Electronic Data for the Purpose of Countering Serious Crime (October 3, 2019), available at <https://www.justice.gov/dag/cloudact> (the “U.S. – U.K. Agreement”). The U.S. – U.K. Agreement provides that a “Designated Authority” for each country shall perform certain, specified functions necessary to implement the agreement. As applied to the United States, “Designated Authority” is defined under the agreement as “the governmental entity designated . . . by the Attorney General. *Id.* at Article 1.8. To address the requirements of this executive agreement, the Attorney General has designated the Criminal Division as the “Designated Authority” in a Federal Register notice published concurrently with this rule. The final rule authorizes the Assistant Attorney General in charge of the Criminal Division to exercise the responsibilities of the Designated Authority and provides that the Assistant Attorney General may further delegate those responsibilities to officials within the Criminal Division, including officials in OIA. OIA serves as the Central Authority for the United States with respect to requests for information, evidence and other assistance received from and made to foreign authorities under mutual legal assistance treaties, multilateral conventions, and executive agreements regarding legal assistance in criminal matters. *See* 28 CFR 0.64-1 (authorizing the Assistant Attorney General in charge of the Criminal Division to re-delegate the duties of the “Central Authority” to certain officials in OIA). Thus, OIA already carries out responsibilities similar to those of a Designated Authority under executive agreements negotiated pursuant to 18 U.S.C. 2523.

To address future agreements of this nature, this final rule applies to any executive agreement under 18 U.S.C. 2523 that either designates the Attorney General or the Department of Justice as the Designated Authority or authorizes the Attorney General to designate a

Designated Authority, and for which the Attorney General has designated the Criminal Division as such authority.

Administrative Procedure Act--5 U.S.C. 553

This rule is a rule of agency organization and relates to a matter relating to agency management and is therefore exempt from the requirements of prior notice and comment and a 30-day delay in the effective date. *See* 5 U.S.C. 553(a)(2), 553(b)(3)(A), 553(d).

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities because it pertains to personnel and administrative matters affecting the Department. Further, a Regulatory Flexibility Analysis is not required to be prepared for this final rule because the Department was not required to publish a general notice of proposed rulemaking for this matter. 5 U.S.C. 604(a).

Executive Orders 12866, 13563, and 13771--Regulatory Review

This action has been drafted and reviewed in accordance with section 1(b) of Executive Order 12866, “Regulatory Planning and Review,” and section 1(b) of Executive Order 13563, “Improving Regulation and Regulatory Review.” This rule is limited to agency organization, management, and personnel as described in section 3(d)(3) of Executive Order 12866 and, therefore, is not a “regulation” or “rule” as defined by the order. Accordingly, this action has not been reviewed by the Office of Management and Budget.

This rule is not subject to the requirements of Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs,” because it is not a significant regulatory action under Executive Order 12866, and because it is “related to agency organization, management, or personnel” and thus not a “rule” under section 4(b) of Executive Order 13771.

Executive Order 13132--Federalism

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988--Civil Justice Reform

This rule was drafted in accordance with the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector of \$100,000,000 or more in any one year (adjusted annually for inflation), and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This action pertains to agency management, personnel, and organization and does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a “rule” as that term is used by the Congressional Review Act, 5 U.S.C. 804(3)(B), (C). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 28 CFR Part 0

International Agreements, Treaties.

Accordingly, by virtue of the authority vested in me as Attorney General, including 5 U.S.C. 301 and 28 U.S.C. 509 and 510, part 0 of title 28 of the Code of Federal Regulations is amended as follows:

PART 0 --ORGANIZATION OF THE DEPARTMENT OF JUSTICE

1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515-519.

2. Section 0.64-6 is added to subpart K to read as follows:

§ 0.64-6 Designated Authority under executive agreements on access to data by foreign governments.

The Assistant Attorney General in charge of the Criminal Division shall have the authority and perform the functions of the “Designated Authority” (or like designation) under executive agreements between the United States of America and other countries regarding access to data by foreign governments, negotiated pursuant to the authority in 18 U.S.C. 2523. This delegation applies to executive agreements that either designate the Attorney General or the Department of Justice as the Designated Authority or authorize the Attorney General to designate a Designated Authority, and for which the Attorney General has designated the Criminal Division as such authority. The Assistant Attorney General in charge of the Criminal Division is authorized to delegate this authority to the Deputy Assistant Attorneys General in the Criminal Division, and to the Director, the Deputy Directors and Associate Directors of the Office of International Affairs.

Dated: October 19, 2020.

William P. Barr
Attorney General